

**IN THE UNITED STATES COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA  
Alexandria Division**

**REPLY IN SUPPORT OF MOTION TO CONTINUE TRIAL UNTIL MAY 29, 2018**

The defendant, Kevin Mallory, by counsel, respectfully files this brief reply to the government's opposition to defendant's motion to continue the trial to May 29, 2018.

The government is incorrect that the “core concern” for the defense is the pending May 1, 2018 expert disclosure deadline. *See* Government’s Opposition to Defense Motion to Continue Trial Until May 29, 2018 (dkt. # 109) at 2. While the pending disclosure deadline is a significant concern for the defense, the issues discussed in the Motion to Continue, concerning the expert’s inability to commence his substantive work until within three weeks of the current trial date, causes significant other trial-preparation problems for the defense as well. Specifically, the defense lacks a clear understanding of the critical evidence in the case, and any defenses that might relate to that critical evidence, until its expert performs his work and communicates his conclusions to counsel. Absent that knowledge, defense counsel is unable to meaningfully engage in substantial portions of their trial preparation, do not know the full contours of defenses that might be available at trial, and are inhibited in advising their client regarding the strength of the government’s evidence and possible defenses to it. Moreover, the defense expert’s conclusions could be instrumental in mounting a challenge to the government’s expert disclosures under *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), and its progeny. The government’s proposed

solution—maintaining the current trial date while continuing the defense expert disclosure deadline—does not address any of these concerns.

Accordingly, for all the foregoing reasons and those stated in the Motion to Continue, defendant respectfully submits that the trial date should be continued for two weeks, until May 29, 2018.

Respectfully submitted,  
Kevin Mallory

By counsel,

By: \_\_\_\_\_/s/  
Jeremy C. Kamens  
Va. Bar No. 41596  
Federal Public Defender  
Todd Richman  
Va. Bar No. 41834  
Assistant Federal Public Defender  
Office of the Federal Public Defender  
1650 King Street, Suite 500  
Alexandria, Virginia 22314  
Telephone: (703) 600-0800  
Facsimile: (703) 600-0880  
Jeremy\_Kamens@fd.org

## **CERTIFICATE OF SERVICE**

I hereby certify that on the 25th day of April 2018, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

John Gibbs, Esq.  
Jennifer Gellie, Esq.  
Colleen Garcia, Esq.  
Assistant U.S. Attorneys

/s/

\_\_\_\_\_  
Jeremy C. Kamens  
Federal Public Defender  
Virginia Bar No. 41596  
Counsel for Defendant  
1650 King St., Suite 500  
Alexandria, Virginia 22314  
(703) 600-0848 (tel.)  
(703) 600-0880 (fax)  
Jeremy\_Kamens@fd.org